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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1181.

SOON HING, PLAINTIFF IN ERROR,

vs.

P. CROWLEY, CHIEF OF POLICE OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED OCTOBER 28, 1884.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Petition.*

In the Circuit Court of the District of California.

In the Matter of the Application of SOON HING for a Writ of *Habeas Corpus.*

To the hon. the judges of the circuit court of the district of California and the said circuit court:

The petition of Soon Hing respectfully shows—

That he is unlawfully imprisoned, detained, confined, and restrained of his liberty by Patrick Crowley, chief of police of the city and county of San Francisco, at the city prison in said city and county and State aforesaid.

That the said imprisonment, detention, confinement, and restraint are illegal, and that the illegality thereof consists in this, to wit:

That on the 18th day of June, A. D. 1883, the board of supervisors of the city and county of San Francisco passed an ordinance,
2 which ordinance is known as Order No. 1719 of the general orders of the board of supervisors of said city and county, and is entitled "Order No. 1719. Regulating the establishment and maintainance of public laundries and public wash-houses within certain limits in the city and county of San Francisco," and that said ordinance was approved by Washington Bartlett, mayor of said city and county, and *ex-officio* president of the board of supervisors of said city and county, on June 25th, 1883. Said ordinance is in the words and figures following, to wit:

"Order No. 1719. Regulating the establishment and maintenance of public laundries and public wash-houses within certain limits of the city and county San Francisco.

"Whereas the indiscriminate establishment of public laundries and public wash-houses, where clothes and other articles are cleansed for hire, is injurious and dangerous to public health and public safety, and prejudicial to the well-being and comfort of the
3 community, and depreciates the value of property in those neighborhoods where such public laundries and such public wash-houses are situate:

"Under and in conformity to the authority vested by section 11 of article XI of the constitution of the State of California, and of subdivision 9 of section 7 of an act, entitled 'An act to repeal the several charters of the city of San Francisco, to establish the boundaries of the city and county of San Francisco, and to consolidate the government thereof,' approved April 19, 1856, and the several acts amendatory thereto and supplementary thereof—

"The people of the city and county of San Francisco do ordain as follows:

"SECTION 1. On and after the passage of this order it shall be unlawful for any person or persons to establish, maintain, or carry on the business of a public laundry or a public wash-house, where clothes or other articles are cleansed for hire, within that
4 portion of the city and county of San Francisco lying and

being within the following boundaries: Commencing at the intersection of Gough street with the waters of the bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street in a westerly direction to Ninth street; thence northwesterly along Ninth street to Market street; thence southwesterly along Market street to Gough street; and thence northerly along Gough street to the point of commencement, without having first complied with the conditions hereinafter specified.

"SEC. 2. It shall be unlawful for any person or persons to conduct or maintain a public laundry or wash-house within the district named in section 1 of this order, without having first obtained a certificate signed by the health officer of the city and county of San Francisco, that the premises are properly and sufficiently drained, and that all proper arrangements for carrying on the business without injury to the sanitary condition of the neighborhood have
5 been complied with, and particularly that the provisions of section 4 of order No. 1666 of this board have been complied with; also a certificate signed by the board of fire wardens of the city and county of San Francisco; that the stoves, washing, and drying apparatus and the appliances for heating smoothing-irons are in good condition, and that their use is not dangerous to the surrounding property from fire, and that all proper precautions have been taken to comply with the provisions of Order No. 1617, defining the fire limits of the city and county of San Francisco, and making regulations concerning the erection and use of buildings in said city and county, and of order No. 1670, 'prohibiting the kindling, maintenance, and use of open fires in houses.'

"SEC. 3. It shall be the duty of the health officer, also of the board of fire wardens, respectively, upon application from any person or persons proposing to open or conduct the business of a
6 public laundry within that portion of this city and county designated and described in section 1 of this order, to inspect the premises in which it is proposed to carry on said business, or in which said business is being carried on, with a view to ascertaining whether the said premises are provided with proper drainage and sanitary appliance; also whether the provisions of orders Nos. 1617 and 1670 of this board have been complied with; and if found in all respects satisfactory, then to issue to said applicants the certificates provided for in section 2 of this order.

"No charge whatever shall be made or compensation or fee collected or received for the performance of any of the services required by the provisions of this order in the inspection of premises or the issuance of a certificate, but all such services shall be performed free of charge.

"SEC. 4. No person or persons owning or employed in the public laundries or public wash-houses provided for in section 1 of this order shall wash or iron clothes between the hours of 10
7 o'clock p. m. and 6 o'clock a. m., nor upon any portion of that day known as Sunday.

SEC. 5. No person or persons engaged in the laundry business

within that portion of this city described in section 1 of this order shall permit any person suffering from any infectious or contagious disease to lodge, sleep, or remain within or upon the premises used by him, her, or them for the purposes or a public laundry.

"SEC. 6. Any person or persons establishing, maintaining, or carrying on the business of a public laundry or a public wash-house, where clothes or other articles are cleansed for hire, within the limits of this city and county, as described in section 1 of this order, without first having complied with the provisions of section 2 of this order, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment of [not] more than six months or
8 by both, and any person who shall violate the provisions of section 4 or 5 of this order shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five dollars nor more than fifty dollars, or by imprisonment not more than one month, or by both such fine and imprisonment.

"SEC. 7. The certificates from the health officer and the board of fire wardens, as required by section 2 of the order, shall be exhibited in some conspicuous place on the premises, and the same shall be produced on the demand of any officer of the city and county of San Francisco.

"SEC. 8. The police authorities are hereby directed to have the provisions of this order strictly enforced.

"SEC. 9. Order No. 1691 and all orders or parts of orders in conflict with any of the provisions of this order are hereby repealed.

"In board of supervisors, San Francisco, June 18, 1883.

"After having been published five successive days, according to law, taken up and passed by the following vote:

9 "Ayes—Supervisors Sullivan, Reichenbach, Shirley, Burton, Smith, Pond, Griffin, Strother, Lewis, Ranken, Ashworth.

"Absent—Supervisor James.

"JNO. A. RUSSELL, *Clerk.*

"Approved: San Francisco, June 25, 1883.

"WASHINGTON BARTLETT,

"*Mayor and ex-officio President Board of Supervisors.*"

That on the 26th day of February, A. D. 1884, a complaint was filed in the police judges' court of the city and county of San Francisco charging petitioner with a violation of section four of said ordinance, which complaint was sworn to by one James Galbraith before the Hon. H. Watson Webb, judge of the police judges' court of the city and county of San Francisco, and is in the words and figures following, to wit:

In the Police Judges' Court of the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA *against* SOON HING.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Now comes James Galbraith, who being duly sworn, deposes and says: That about the hour of 11 o'clock p. m., on the 25 day of February, 1884, at No. 1417 Jackson street, between Hyde street and Larkin street, in the city and county of San Francisco, State of California, one Soon Hing did willfully and unlawfully wash and iron clothes in a certain public laundry and public wash-house where clothes were then and there cleansed for hire. The said Soon Hing being then and there a person employed in said laundry and wash-house. Said time being between the hours of 10 o'clock p. m. of the 25th day of February, 1884, and 6 o'clock a. m. of the next day, and said place being within the following boundaries:

Commencing at the intersection of Devisadero street with the waters of the bay of San Francisco; thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street in a westerly direction to Potrero
11 avenue; thence southerly along Portrero avenue to Army street; thence westerly along Army street to Dolores street; thence northerly along Dolores street to and across Market street to Ridley street; thence westerly along Ridley street to Devisadero street, and thence northerly along Devisadero street to the bay and point of commencement.

Thereby violating the provisions of section 4, order 1719, of the board of supervisors of the city and county of San Francisco, as amended by order No. 1746 of said board, contrary to the form, force, and effect of the statute in such cases made and provided, and against the peace and dignity of the people of the State of California.

And this complainant prays that the said accused may be brought before a magistrate and dealt with according to law.

JAMES GALBRAITH,
Res. and Place of Bus., 1109 *Folsom.*

Subscribed and sworn to before me, this 26 day of February, A. D. 1884.

H. WATSON WEBB,
Judge of the Police Judge's Court of the City and County of San Francisco.

12 Endorsed: Filed in the police judge's court of the city and county of San Francisco, this 26 day of February, 1884. H. Cook, clerk.

That upon said complaint a warrant was issued by the said judge, and said warrant was served, and the said Soon Hing was thereafter taken into custody.

And petitioner alleges that for several years last past he has been engaged in working for hire in a public laundry in the city and county of San Francisco, and has in all respects complied with the laws of the United States, of the State of California, and the ordinances of the city and county of San Francisco, except as hereinbefore stated.

Petitioner further shows that the business of carrying on a laundry is a lawful business, wherein a large number of the subjects of the Emperor of China have been and are engaged in the said
13 city and county of San Francisco, and the majority of the subjects of said Emperor of China carrying on said business in the said city and county of San Francisco carry on the same within the limits of that portion thereof hereinbefore particularly described; that is to say, according to the information and belief of petitioner, there are about 250 Chinese laundries within that portion of said city and county described in section one of said ordinance, and there are about 25 carried on in said city and county within said particularly described portion of said city and county of San Francisco.

There is now and has been for several years last past great antipathy and hatred on the part of the residents of said city and county of San Francisco and the citizens and taxpayers thereof against the subjects of the Emperor of China residing and doing business in said city and county of San Francisco.

That such antipathy and hatred has manifested itself in
14 various ways and under various forms for the purpose and with the intent of expelling and compelling the subjects of said Emperor of China to quit and abandon doing business or remaining in said city and county of San Francisco, or in the State of California, or in the United States of America.

That owing to the aforesaid feeling of antipathy and hatred prevailing against the said subjects of the Emperor of China, and not otherwise, and not for any sanitary, police, or other legitimate purpose, but for the purpose and with the intent of forcing said subjects of the Emperor of China engaged in carrying on the business of a laundry in said city and county of San Francisco to abandon the exercise of their lawful vocation and their only means of earning a livelihood, the said board of supervisors did enact and pass the ordinance herein above set forth.

That said board of supervisors, at the time of the passage
15 of said ordinance, well knew that the great bulk of the subjects of said Emperor of China engaged in carrying on the business of a laundry within the said city and county of San Francisco were situate within that portion of the limits thereof in said ordinance particularly specified.

That said ordinance was enacted, framed, and adopted, not from any legitimate police regulation or sanitary purpose, but for the purpose and with the intent of oppressing the Chinese engaged in the laundry business.

That petitioner has been and is earning his living exclusively by working at washing and ironing for hire in a laundry, and in order

to gain a livelihood is obliged to work late in the night, and has no other lawful vocation or pursuit to earn his living except such business.

That on the 1st day of January, A. D. 1884, petitioner's employer paid to the license collector of the city and county of San
16 Francisco the sum of six dollars, being the amount required by the ordinance of the city and county of San Francisco to procure the issuance of a license to carry on the business of a laundry, and thereupon said license collector issued to said employer a license authorizing, permitting, and allowing him to carry on and conduct the business of a public laundry at 1417 Jackson street, said place being within the district described in section one of said ordinance.

And petitioner avers that section four of said order No. 1719, of said board of supervisors hereinbefore first set forth, is null and void, and in contravention of the provisions of the Burlingame treaty entered into between the Emperpor of China and the Government of the United States, on February 5th, A. D. 1870 (16 U. S. Statutes at Large, p. 740), and in contravention of the provisions of article 14 of the amendments to the Constitution of the United States, wherein it is provided:

"Nor shall any State deprive any person of life, liberty, or
17 property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." And in contravention of statutes of the United States.

Wherefore petitioner prays that a writ of *habeas corpus* issue herein in the manner and form prescribed by law in such cases.

his
SOON × HING, *Petitioner.*
mark.

Witness:
F. E. STRANAHAN.
THOS. D. RIORDAN, *Att'y for Pet'n'r.*

STATE OF CALIFORNIA,
City and County of San Francisco, } ss:

Soon Hing, being duly sworn, deposes and says that he is the petitioner in the foregoing petition named; that he has heard read said petition and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

his
SOON × HING.
mark.

Witness:
F. E. STRANAHAN.

Subscribed and sworn to before me, this 3d day of March, A. D. 1884.

[SEAL] SAM'L S. MURFEY,
Notary Public.

18 (Endorsed:) Filed April 7, 1884. L. S. B. Sawyer, clerk.

19 *Order Denying Writ of Habeas Corpus.*

At a stated term, to wit, the February term, A. D. 1884, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room in the city and county of San Francisco, on Monday, the 7th day of April, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable Lorenzo Sawyer, circuit judge; the Honorable George M. Sabin, district judge of the district of Nevada, sitting in said circuit court by order of the circuit judge, in pursuance of the statute in such case made and provided.

In the Matter of the Application of SOON HING for a Writ of *Habeas Corpus.*—No. 3275.

The application for a writ of *habeas corpus* coming on to be heard in open court, upon the petition filed herein, and having been argued by T. D. Riordan, Esq., on behalf of the petitioner, and the court being sufficiently advised, the circuit and district judges
20 therein being opposed in opinion, it appearing to Hon. Lorenzo Sawyer, the presiding judge, that the said petition does not present a case which entitles the petitioner to the right of *habeas corpus*, and the said district judge being of the contrary opinion, it is therefore ordered, in pursuance of the opinion of the presiding judge, that a writ of *habeas corpus* be, and the same is hereby, denied.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the above-entitled cause.

Attest my hand and the seal of said circuit court, this 7th day of April, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By F. D. MONCTON,
Deputy Clerk.

21 *Certificate of Opposition of Opinion.*

At a stated term, to wit, the February term, A. D. 1884, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room in the city and county of San Francisco, on Monday, the 7th day of April, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable Lorenzo Sawyer, circuit judge; the Honorable George M. Sabin, district judge of the district of Nevada, sitting in said circuit court by order of the circuit judge, in pursuance of the statute in such case made and provided.

In the Matter of the Application of SOON HING for a Writ of *Habeas Corpus.*

In this case, petitioner having filed his petition for a writ of *habeas*

corpus, and having this day moved this court in open court
22 that a writ of *habeas corpus* issue, as prayed for in said petition, and said motion having been heard upon said petition and duly considered, and the opinion of the judges in respect to the questions arising on said motion, and each of them, being opposed, and the circuit judge being opinion that section four of said ordinance was valid, and that said writ ought not to issue, it was thereupon ordered that said motion be denied, which said order was thereupon duly and regularly entered on the minutes of said courts.

Said petition and order are hereby made a part of this certificate and ordered to be certified by the clerk and annexed to this certificate as a part thereof, and a part of the record of this case on certificate of opposition of opinion.

At the hearing of said motion there occurred as questions arising on said petition and application for a writ of *habeas*
23 *corpus*—

1. Whether section four of the ordinance set out in the petition is void on the ground that it is not within the police power of the board of supervisors of the city and county of San Francisco.

2. Whether said section is void on the ground that it discriminates between those engaged in the laundry business and those engaged in other classes of business.

3. Whether said section is void on the ground that it discriminates between the different classes of persons engaged in the laundry business.

4. Whether said section is void on the ground that it deprives a man of the right to labor at all times.

5. Whether said section is void on the ground that it is unreasonable in its requirements, in restraint of trade, or upon any
24 other ground apparent upon the face of the ordinance, or appearing in the petition.

Upon which several questions and upon each of them, the opinions of the judges were opposed.

Whereupon, on motion of Thomas D. Riordan, Esq., on behalf of petitioner, that the several points on which the disagreement has happened may, during the term, be stated upon the direction of judges, and certified under the seal of the court to the Supreme Court of the United States, to be finally decided, it is ordered that the foregoing statement of the record upon which the application was heard and of the facts which is made under the direction of the judges be entered of record and certified accordingly at the request of his said counsel and in pursuance of the law in such case made and provided.

April 7th, 1884.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Signed) GEO. M. SABIN,
Dist. Judge.

25 (Endorsed:) Filed and entered April 7th, 1884. L. S. B. Sawyer, clerk.

26 *Certificate to Motion Roll.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California.

In the Matter of SOON HING on *Habeas Corpus.*

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States, of the ninth judicial circuit, within and for the district of California, do hereby certify that the foregoing papers hereto annexed constitute the motion roll in the therein-entitled action.

Witness my hand and the seal of said circuit court, this 7th day of April, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk,*
By F. D. MONCTON,
Deputy Clerk.

Endorsed: Motion roll. Filed April 7, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

27 *Bond on Writ of Error.*

In the Supreme Court of the United States of America.

In re SOON HING, Plaintiff in Error.—No. 3275.

Know all men by these presents that we, F. A. Bee and Wong Wai are held and firmly bound unto Patrick Crowley, Esquire, chief of the police of the city and county of San Francisco, State of California, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Patrick Crowley, Esquire, chief of police as aforesaid.

For the payment of which, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 21st day of October, A. D. 1884.

28 Whereas the above-named Soon Hing applied to the circuit court of the United States of America, district of California, No. 9, by petition, for a writ of *habeas corpus,* to be issued and addressed to Patrick Crowley, Esquire, chief of police of the city and county of San Francisco, in said State, to bring the body of said Soon Hing before said court, to be dealt with according to law, it being alleged in said petition that he was unlawfully imprisoned and restrained of his liberty by the said Patrick Crowley, Esquire, chief of police as aforesaid, and upon the hearing of said petition by and before said circuit court held by Hon. Lorenzo Sawyer, circuit judge of said court, and Hon. George M. Sabin, district judge of the United States for the State of Nevada, and there being then and there a division of opinion between the said judges as to the power of said court to issue such writ of *habeas corpus* peti-

tioned for as aforesaid, one of said judges holding said writ of
29 *habeas corpus* should not issue, and the other of said judges holding said writ should issue, and therefore said writ of *habeas corpus* was denied by said circuit court, which division of opinion and denial was duly certified by said judges by said court and entered on the minutes thereof:

Now, therefore, that the action of said judges and said court may be reviewed, revised, and heard by the Supreme Court of the United States of America, and such action had by said Supreme Court in the premises as it shall be advised and shall determine, the said Soon Hing has sued out and prosecuted a writ of error to the Supreme Court of the United States of America to revise the said order and judgment so as aforesaid made by said circuit court of the United States of America for the district of California in the said proceeding therein (No. 3275):

Now, therefore, the condition of this obligation is such, that
30 if the above-named Soon Hing, plaintiff in error, shall prosecute the said writ of error to effect, and answer all costs that shall by law be or become payable to the obligee herein, then this obligation to be void; otherwise, to remain in full force and virtue.

F. A. BEE. [SEAL.]
WONG WAI. [SEAL.]

Signed, sealed, and delivered in the presence of—
L. S. B. SAWYER.

UNITED STATES OF AMERICA, *District of California:*

F. A. Bee and Wong Wai, being sworn, each for himself deposes and says: That he is a householder in said district, and is worth the sum of five hundred dollars, in lawful money of the United States of America, exclusive of property exempt by law from execution, over and above all his debts and liabilities.

F. A. BEE. [SEAL.]
WONG WAI. [SEAL.]

Subscribed and sworn to before me, October 21st, A. D. 1884.
L. S. B. SAWYER,
Com'r, &c.

31 (Endorsed:) The form of the within bond and the sufficiency of the sureties thereon are hereby approved, Oct. 21, 1884. Lorenzo Sawyer, U. S. circuit judge, 9th judicial circuit. Filed Oct. 21, 1884. L. S. B. Sawyer, clerk.

32 Circuit Court of the United States, Ninth Circuit, District of California.

In the Matter of the Application of SOON HING for a Writ of *Habeas Corpus.*

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States, of the ninth judicial circuit, in and for the district of Cali-

fornia, do hereby certify that the foregoing thirty-one written pages numbered from 1 to 31 inclusive, are a full, true, and correct copy of the record and of all proceedings in the therein entitled cause, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court, this 21st day of October, A. D. 1884.

[SEAL.]

L. S. B. SAWYER, *Clerk*,
By F. D. MONCTON,
Deputy Clerk.

33 Supreme Court of the United States of America.

In re SOON HING, Plaintiff in Error.

UNITED STATES OF AMERICA, }
District of California, } *ss:*

F. E. Stranahan, being duly sworn, deposes and says: That he is a white male citizen of the United States, and was at all the times hereinafter mentioned, over the age of 21 years, and not a party to this proceeding. That on the 21st day of October, A. D. 1884, at the city and county of San Francisco, in said district of California, deponent personally served the citation and writ of error in this proceeding, and which are made a part of the record herein, by then and there delivering to Patrick Crowley, Esquire, chief of police of the city and county of San Francisco, the person therein named, personally, a true copy of each; and at the same time and place exhibiting to said Patrick Crowley, Esq., the originals of each. And further deponent saith not.

F. E. STRANAHAN.

Subscribed and sworn to before me, Oct. 21, A. D. 1884.
F. D. MONCTON,
Comm'r of U. S. Circuit Court, District of California.

34 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States, of the ninth judicial circuit, in and for the district of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a petition or *habeas corpus* which is in the said circuit court, before you, in which Soon Hing is petitioner and plaintiff in error and P. Crowley, chief of police of the city and county of San Francisco, State of California, is respondent and defendant in error a manifest error hath happened, to the great damage of the said petitioner and plaintiff in error, as by his petition appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send

the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the third Monday of the October, 1884, term of the said Supreme Court to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 21st day of October, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

[SEAL.] L. S. B. SAWYER,
Clerk U. S. Circuit Court, Ninth Circuit, District of California,
By F. D. MONCTON,
Deputy Clerk.

The above writ of error is hereby allowed.

LORENZO SAWYER,
U. S. Circuit Judge, 9th Circuit, District of California.

35 *The Answer of the Judges of the Circuit Court of the United States for the District of California.*

The record and all proceedings of the plaint, whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States of America, within mentioned, of the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

By the court:

[SEAL.] L. S. B. SAWYER, *Clerk,*
By F. D. MONCTON,
Deputy Clerk.

[Endorsed:] United States Supreme Court. Soon Hing, pl'ff in error, *vs.* P. Crowley, chief of police, &c., def't in error. Writ of error.

Due service and receipt of a copy of within writ of error acknowledged, this —— day of October, 1884.

36 UNITED STATES OF AMERICA, *ss:*

To P. Crowley, chief of police of the city and county of San Francisco, State of California, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the third Monday of the October, A. D. 1884, term of said court, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, ninth judicial circuit, in and for the district of California, wherein

Soon Hing is petitioner and plaintiff in error and you are respondent and defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the circuit court of the United States, ninth circuit, district of California, this 21st day of October, A. D. 1884, and of the Independence of the United States the one hundred and ninth.

LORENZO SAWYER,
U. S. Circuit Judge, 9th Judicial Circuit, District of California.

37 Due service and receipt of a copy of within citation acknowledged this —— day of October, 1884.

[Endorsed:] In the Supreme Court of the United States. Soon Hing, plaintiff in error, *vs.* P. Crowley, chief of police, &c., def't in error. Citation.

38 *Assignment of Errors.*

United States Supreme Court.

In the matter of the application of SOON HING for a writ of *habeas corpus.*

1st. The court erred in deciding that section 4 of the ordinance set out in the petition is not void.

2d. The court erred in deciding that the said section is within the police power of the board of supervisors of the city and county of San Francisco.

3d. The court erred in deciding that said section four does not discriminate between those engaged in the laundry business and those engaged in other classes of business.

39 5th. The court erred in deciding that said section does not discriminate between the different classes of persons engaged in the laundry business.

6th. The court erred in deciding that section 4 is not void, on the ground that it deprives a person of the right to labor at all times.

7th. The court erred in deciding that said section is not unreasonable in its requirements or in restraint of trade.

And the said Soon Hing prays that the said judgment entered herein against him be reversed, annulled, and altogether held for nothing, and that he be restored to all things which he has lost by occasion of said judgment, &c.

THOS. D. RIORDAN,
Attorney for Plaintiff in Error.

[Endorsed:] No. ——. United States Supreme Court. In the matter of the application of Soon Hing for writ of *habeas corpus.* Assignment of errors.

Endorsed on cover: California C. C. U. S. No. 1181. Soon Hing, plaintiff in error, [*vs.*] P. Crowley, chief of police of the city and county of San Francisco. Filed 28th October, 1884.

114-703

FILED
OCT. 29 1884
JAMES H. MCKENNEY
CLERK

Supreme Court of the United States.

No. 1181.

SOON HING,
PLAINTIFF IN ERROR,

vs.

P. CROWLEY,
Chief of Police, &c.,
DEFENDANT IN ERROR.

Brief of Argument.

DAVID McCLURE,
THOS. D. RIORDAN,
Counsel for Plaintiff in Error.

JUDD & DETWEILER, PRINTERS.

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA.

IN THE MATTER OF THE APPLICATION OF SOON HING FOR A WRIT OF HABEAS CORPUS.

Brief and Argument of Appellant.

This case comes to this Court for review, upon "certificate of opposite opinions" of the judges sitting therein, in the United States Circuit Court of the Ninth Circuit, District of California, pursuant to Sections six hundred and fifty-two, six hundred and ninety-three and six hundred and ninety-seven of the U. S. Revised Statutes, and on appeal as provided in Section seven hundred and sixty-three, subdivision two, and Section seven hundred and sixty-four of said Statutes, and the rules of this Court.

Statement of Case.

The petitioner, Soon Hing, a subject of the Empire of China, was arrested and is held in custody, under and by virtue of a warrant issued by the Police Court of the City and County of San Fran-

cisco, upon a sworn complaint wherein he is charged with a violation of Sec. 4 of Order No. 1719 of the Board of Supervisors of said city and county, approved June 25th, 1883, in washing and ironing clothes between the hours of 10 o'clock, P. M., of the 25th day of February, 1884, and 6 o'clock, A. M., of the next day.

Said order is incorporated in the petition, and said petition is as follows:

"*In the Circuit Court of the District of California.*

" IN THE MATTER OF THE APPLI-
" CATION OF SOON HING FOR A
" WRIT OF HABEAS CORPUS.

" To the Hon. the Judges of the Circuit Court " of the District of California, and the said Circuit " Court.

" The petition of Soon Hing respectfully shows:

" That he is unlawfully imprisoned, detained, " confined and restrained of his liberty, by Patrick " Crowley, Chief of Police of the City and County " of San Francisco, at the city prison in said city " and county, and State aforesaid. That the said " imprisonment, detention, confinement and re- " straint are illegal, and that the illegality thereof " consists in this, to-wit:

" That on the 18th day of June, A. D. 1883, " the Board of Supervisors of the City and County " of San Francisco passed an ordinance, which " ordinance is known as Order No. 1719, of the " general orders of the Board of Supervisors, and

" is entitled, 'Order No. 1719, regulating the es-
" tablishment and maintenance of public laundries
" and public wash-houses within certain limits in
" the City and County of San Francisco,' and that
" said ordinance was approved by Washington
" Bartlett, Mayor of said city and county, and *ex-*
" *officio* President of the Board of Supervisors of
" said city and county, on June 25th, 1883. Said
" ordinance is in the words and figures following,
" to-wit:

" Order No. 1719—Regulating the establishment and maintenance of public laundries and public wash-houses within certain limits of the City and County of San Francisco.

" WHEREAS, The indiscriminate establishment of public laundries and public wash-houses where clothes and other articles are cleansed for hire, is injurious and dangerous to public health and public safety, and prejudicial to the well-being and comfort of the community, and depricates the value of property in those neighborhoods where such public laundries and public wash-houses are situate.

" Under and in conformity to the authority vested by Section 11 of Article XI of the Constitution of the State of California, and of Subdivision 9 of Section 75 of an Act entitled 'An Act to repeal the several charters of the City of San Francisco, to establish the boundaries of the City and County of San Francisco and to consolidate the government thereof,' approved April 19, 1856, and the several Acts amendatory thereto and supplementary thereof.

"The people of the City and County of San Francisco do ordain as follows:

"SECTION 1. On and after the passage of this order in shall be unlawful for any person or persons to establish, maintain or carry on the business of a public laundry or a public wash-house where clothes or other articles are cleansed for hire, within that portion of the City and County of San Francisco lying and being within the following boundaries: Commencing at the intersection of Gough street with the waters of the Bay of San Francisco: thence following the bay shore easterly and southerly to the easterly end of Channel street; thence along Channel street, in a westerly direction, to Ninth street; thence northwesterly along Ninth street to Market street; thence southwesterly along Market street to Gough street, and thence northerly along Gough street to the point of commencement, without having first complied with the conditions hereinafter specified.

"SEC. 2. It shall be unlawful for any person or persons to conduct or maintain a public laundry or wash-house within the district named in Section 1 of this Order, without having first obtained a certificate signed by the Health Officer of the City and County of San Francisco, that the premises are properly and sufficiently drained, and that all proper arrangements for carrying on the business without injury to the sanitary condition of the neighborhood have been complied with, and particularly that the provisions of Section 4 of Order No. 1666 of this Board have been complied with; also a certificate signed by the Board of Five Wardens

of the City and County of San Francisco, that the stoves, washing and drying apparatus and the appliances for heating smoothing-irons are in good condition, and that their use is not dangerous to the surrounding property from fire, and that all proper precautions have been taken to comply with the provisions of Order No. 1617, defining 'the fire limits of the City and County of San Francisco, and making regulations concerning the erection and use of buildings in said city and county,' and of Order No. 1670, 'prohibiting the kindling, maintenance and use of open fires in houses.'

"SEC. 3. It shall be the duty of the Health Officer, also of the Board of Five Wardens respectively, upon application from any person or persons proposing to open or conduct the business of a public laundry within that portion of this city and county designated and described in Section 1 of this Order, to inspect the premises in which it is proposed to carry on said business, or in which said business is being carried on, with a view of ascertaining whether the said premises are provided with proper drainage and sanitary appliance, also whether the provisions of Order Nos. 1617 and 1670 of this Board have been complied with, and, if found in all respects satisfactory, then to issue to said applicants the certificates provided for in Section 2 of this Order.

"No charge whatever shall be made or compensation or fee collected or received for the performance of any of the services required by the provisions of this Order, in the inspection of premises or the insurance of a certifiicate, but all such services shall be performed free of charge.

"SEC. 4. No person or persons, owning or employed in the public laundries or public wash-houses provided for in Section 1 of this order shall wash or iron clothes between the hours of 10 o'clock P. M. and 6 o'clock A. M., nor upon any portion of that day known as Sunday.

"SEC. 5. No person or persons engaged in the laundry business within that portion of this city described in Section 1 of this Order shall permit any person suffering from any infectious or contagious disease, to lodge, sleep or remain within or upon the premises used by him, her or them for the purposes of a public laundry.

"SEC. 6. Any person or persons establishing, maintaining or carrying on the business of a public laundry or a public wash-house, where clothes or other articles are cleansed for hire, within the limits of this city and county as described in Section 1 of this Order, without first having complied with the provisions of Section 2 of this Order, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment of more than six months, or by both; and any person who shall violate the provisions of Section 4 or 5 of this Order shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five dollars nor more than fifty dollars, or by imprisonment not more than one month, or by both such fine and imprisonment.

"SEC. 7. The certificates from the Heath Officer and the Board of Fire Wardens as required by Section 2 of this Order, shall be exhibited in

some conspicuous place on the premises, and the same shall be produced on the demand of any officer of the City and County of San Francisco.

" SEC. 8. The Police authorities are hereby directed to have the provisions of this order strictly enforced.

" SEC. 9. Order No. 1,691, and all orders or parts of orders in conflict with any of the provisions of this order, are hereby repealed.

" In Board of Supervisors, San Francisco, June 18, 1883.

" After having been published five successive days, according to law, taken up and passed by the following vote :

" Ayes—Supervisors Sullivan, Reichenbach, Shirley, Burton, Smith, Pond, Griffin, Strothers, Lewis, Ranken, Ashworth.

" Absent—Supervisor James.

JNO. A. RUSSELL,
Clerk.

" Approved, San Francisco, June 25, 1883.

WASHINGTON BARTLETT,
" Mayor and ex-officio President Board of Supervisors."

" That on the 26th day day of February, " A. D. 1884, a complaint was filed in the Police " Judge's Court of the City and County of San "Francisco, charging petitioner with a violation of " section four of said ordinance, which complaint " was sworn to by one James Galbraith before the

"Hon. H. Watson Webb, Judge of the Police "Judge's Court of the City and County of San "Francisco, and is in the words and figures following, to wit:

"*In the Police Judge's Court of the City and County "of San Francisco, State of California.*

"THE PEOPLE OF THE STATE OF CALIFORNIA
"*against*
"SOON HING.

"STATE OF CALIFORNIA,
"City and County of San Francisco, } ss.

"Now comes James Galbraith, who being duly "sworn, deposes and says that about the hour of "11 o'clock P. M. on the 25th day of February, "1884, at No. 1417 Jackson street, between Hyde "street and Larkin street, in the city and county "of San Francisco, State of California, one Soon "Hing did wilfully and unlawfully wash and iron "clothes in a certain public laundry and public "washhouse where clothes were then and there "cleansed for hire. The said Soon Hing being "then and there a person employed in said laun-"dry and washhouse. Said time being between "the hours of 10 o'clock P. M. of the 25th day of "February, 1884, and 6 o'clock A. M. of the next "day, and said place being within the following "boundaries:

(Description of territory prohibited.)

"Thereby violating the provisions of section 4, "order 1719 of the board of supervisors of the city

"and county of San Francisco, as amended by order "No. 1746 of said board, contrary to the form, "force and effect of the statue in such cases made "and provided, and against the peace and dignity "of the People of the State of California.

"And this complainant prays that said accused "may be brought before a magistrate and dealt "with according to law,

"JAMES GALBRAITH,

"Res. and place of bus. 1109 Folsom street.

"Subscribed and sworn to before me this "26th day of February, A. D. 1884.

"H. WATSON WEBB,

"Judge of the Police Judge's Court of the "City and County of San Francisco.

(Endorsed):

"Violation of the Laundry Order of the Board "of Supervisors. The People of the State of Cal- "ifornia *vs.* Soon Hing. Complaint. Complainant, "James Galbraith. Filed in the Police Judge's "Court of the City and County of San Francisco "this 26th day of February, 1884.

"H. COOK, Clerk.

"That upon said complaint a warrant was "isssued by the said Judge, and said warrant was "served and the said Soon Hing was thereafter "taken into custody.

"And petitioner alleges that for several years "last past he has been engaged in working for hire "in a public laundry in the City and County of "San Francisco, and has in all respects complied

"with the laws of the United States, of the State "of California, and the ordinances of the City "and County of San Francisco, except as herein- "before stated.

"Petitioner further shows that the business of "carrying on a laundry is a lawful business, "wherein a large number of the subjects of the "Emperor of China have been and are engaged in "the said City and County of San Francisco; and "the majority of the subjects of said Emperor of "China carrying on said business in the said City "and County of San Francisco carry on the same "within the limits of that portion thereof herein- "before particularly described; that is to say, ac- "cording to the information and belief of peti- "tioner there are about 250 Chinese laundries "within that portion of said city and county de- "scribed in section one of said ordinance, and "there are about 25 carried on in said city and "county without said particularly described por- "tion of said city and county of San Francisco.

"That there is now, and has been for several "years last past, great antipathy and hatred on "the part of the residents of said City and County "of San Francisco, and the citizens and taxpayers "thereof, against the subjects of the Emperor of "China, residing and doing business in said City "and County of San Francisco. That said an- "tipathy and hatred has manifested itself in "various ways, and under various forms, for the "purpose and with the intent of expelling and com- "pelling the subjects of the said Emperor of China "to quit and abandon doing business, or remaining

" in said City and County of San Francisco, or in " the State of California, or in the United States " of America.

" That owing to the aforesaid feeling of antipathy " and hatred prevailing against the said subjects " of the Emperor of China, and not otherwise, " and not for any sanitary, police, or other legiti- " mate purpose, but for the purpose and with the " intent of forcing said subjects of the Emperor of " China, engaged in carrying on the business of a " laundry in the said City and County of San " Francisco, to abandon the exercise of their lawful " vocation, and their only means of earning a live- " lihood, the said Board of Supervisors did enact " and pass the ordinance herein above first set forth.

" That said Board of Supervisors, at the time of " the passage of said ordinance, well knew that the " great bulk of the subjects of the said Emperor " of China engaged in carrying on the business of " a laundry within the said City and County of " San Francisco, were situated within that portion " of the limits thereof, in said ordinance particu- " larly specified.

" That said ordinance was enacted, framed and " adopted, not from any legitimate police regula- " tions, or sanitary purpose, but for the purpose " and with the intent of oppressing the Chinese en- " gaged in the laundry business.

" That petitioner has been and is earning his " living exclusively by working at washing and " ironing for hire in a laundry; and in order to " gain a livelihood is obliged to work late in the

"night, and has no other lawful vocation or pur-
"suit to earn his living except such business.

"That on the 1st day of January, A. D. 1884, peti-
"tioner's employer paid to the license collector of the
"City and County of San Francisco the sum of
"six dollars, being the amount required by the or-
"dinance of the City and County of San Fran-
"cisco to procure the issuance of a license to carry
"on the business of a laundry, and thereupon said
"license collector issued to said employer a
"license, authorizing, permitting and allowing him
"to carry on and conduct the business of a public
"laundry at 1417 Jackson street, said place being
"within the district described in section one of
"said ordinances.

"And petititioner avers that said section 4 of
"said Order No. 1719 of said Board of Supervi-
"sors hereinbefore set forth is null and void, and
"in contravention of the provisions of the Burlin-
"game Treaty entered into between the Emperor
"of China and the Government of the United
"States, on February 5th, A. D. 1870, (16 U. S.
"Statutes at Large, p. 740) and in contravention
"of the provisions of Article 14 of the amendments
"to the Constitution of the United States, wherein
"it provides: "Nor shall any State deprive any
"person of life, liberty or property, without due
"process of law, nor deny to any person within its
"jurisdiction the equal protection of the laws, and
"in contravention of the Statutes of the United
"States."

"Wherefore petitioner prays that a writ of

" habeas corpus issue herein in the manner and
" form prescribed by law in such cases.

" THOS. D. RIORDAN,
" Att'y for Petitioner.

his
" Soon X Hing.
mark
" Petitioner.

" Witness F. E. Stranahan.

STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO. } ss.

" Soon Hing being duly sworn deposes and says:
" that he is the petitioner in the foregoing petition
" named: that he has heard read said petition and
" knows the contents thereof, and that the same is
" true of his own knowledge except as to those
" matters which are therein stated on his informa-
" tion or belief, and as to those matters he believes
" it to be true.

his
" Soon X Hing.
mark

" Witness F. E. Stranahan.

" Subscribed and sworn before me this 3d day
" of March, A. D. 1884.

" SAMUEL S. MURFEY,
" Notary Public.

" [Endorsed:] Filed April 7, 1884.

" L. S. B. SAWYER,
" Clerk."

On the 7th day of April, 1884, the said applicant, Soon Hing, by said petition, applied at the

stated February term of said Circuit Court, Honorable Lorenzo Sawyer, Circuit Judge, presiding, and the Honorable George M. Sabin, U. S. District Judge of the District of Nevada, sitting in said Circuit Court by order of said Circuit Judge, for a writ of habeas corpus, that he might be discharged from said arrest and imprisonment.

The said Circuit Court, the said Judges being of "opposite opinions," denied the prayer of petitioner's petition.

By reference to the Transcript it will appear that:

"At the hearing of said motion, there occurred "as questions arising in said petition and applica- "tion for a writ of Habeas Corpus:

"1. Whether Section four of the Ordinance set "out in the petition is void on the ground that it "is not within the Police power of the Board of "Supervisors of the City and County of San Fran- "cisco."

"2. Whether said section is void on the ground "that it discriminates between those engaged in "the laundry business and those engaged in other "classes of business."

"3. Whether said section is void on the ground "that it discriminates between the different classes "of persons engaged in the laundry business."

"4. Whether said section is void on the ground "that it deprives a man of the right to labor at all "times."

"5. Whether said section is void on the ground "that it is unreasonable in its requirements in re-

"straint of trade, or upon any other ground apparent upon "the face of the ordinance, or appearing in the petition."

"Upon which several questions, and upon each of them, "the opinions of the judges were opposed."

And as above suggested, there being an "opposition of opinion" on the part of the judges, the case is certified up to this Court for review.

Specification of Errors

Plaintiff in error specifies and assigns as errors on which he will rely:

1st. That the court erred in deciding that section 4 of the ordinance set out in the petition is not void.

2d. The court erred in deciding that the said section is within the police power of the Board of Supervisors of the city and county of San Francisco.

3d. The court erred in deciding that said section 4 does not discriminate between those engaged in the laundry business and those engaged in other classes of business.

4th. The court erred in deciding that said section does not discriminate between the different classes of persons engaged in the laundry business.

5th. The court erred in deciding that section 4 is not void on the ground that it deprives a person of the right to labor at all times.

6th. The court erred in deciding that said section is not unreasonable in its requirements or in restraint of trade.

BRIEF OF ARGUMENT.

I.

In California there is no inhibitory Sunday law.

The Sabbath cannot be legally desecrated by labor in California.

The only law applicable to the Sabbath existing in Cali-

fornia on the adoption of its penal code, February 14th, 1872, were sections 299 and 300 of that code, which read as follows:

"SECTION 299. Every person who on the Christian Sab-
"bath gets up, exhibits, opens, or maintains, or aids in get-
"ting up, exhibiting, opening, or maintaining any bull, bear,
"cock, or prize fight, horse race, circus, gambling-house, or
"saloon, or any barbarous and noisy amusement, or who
"keeps, conducts, or exhibits any theater, melodeon, dance-
"cellar, or place of musical, theatrical, or operatic perform-
"ance, spectacle, or representation, where any wines, liquors,
"or intoxicating drinks are bought, sold, used, drank, or
"give away, or who purchases any ticket of admission, or
"directly or indirectly pays any admission fee to or for the
"purpose of witnessing or attempting any such place, amuse-
"ment spectacle, performance, or representation, is guilty of
"a misdemeanor."

"SEC. 300. Every person who keeps open on Sunday any
"store, work-shop, bar, saloon, banking-house, or other place
"of business, for the purpose of transacting business therein,
"is punishable by fine of not less than five nor more than
"fifty dollars."

Afterwards, in 1880, the Legislature incorporated another section (sec. 301) into said penal code, which went into effect on the first day of that year, and is as follows:

"SEC. 301. The provisions of the preceding section do not
"apply to persons who, on Sunday, keep open hotels, board-
"ing-houses, barber-shops, baths, markets, restaurants, tav-
"erns, livery-stables, or retail drug stores, for the legitimate
"business of each, or such manufacturing establishments as
"are usually kept in continued operation, provided that the
"provisions of the preceding section shall apply to persons
"keeping open barber-shops, bath-houses, and hair-dressing
"saloons after twelve o'clock m. on Sunday."

These three sections, which embraced all the Sunday law or enactments California then had, were repealed by an act of its Legislature, approved February 8th, 1883, which reads as follows:

"*The People of the State of California, represented*
"*in Senate and Assembly, do enact as follows:*

"SECTION 1. Sections two hundred and ninety-
"nine, three hundred, and three hundred and one
"of the Penal Code are hereby repealed.

"SEC. 2. This Act shall take effect from and
"after its passage."

Laws of California for 1883, p. 1.

Therefore, since May 1st, 1883, California has had no law prohibiting labor on the Sabbath day; and the repeal of said sections, of all that related to the subject matter, is a legislative declaration of the right of every resident of the State to do work or transact any legitimate business on Sunday, without violating any law in force in that State.

We do not refer to the above sections, or their repeal, for the reason that the petitioner was complained of or arrested for violating said ordinance on Sundays, for he was not, but was arrested for working "between the hours of 10 o'clock, P. M., of the 25th of February, 1884, and 6 o'clock, A. M., of the next day," which would embrace portions of Tuesday and Wednesday; but, we do refer to the fact of such repeal to show that the passage of the ordinance by the Board of Supervisors was class and onerously discriminating legislation; that the members of that Board, on the 25th day of June, 1883, passed this offensive and discriminating ordinance, in defiance of the declaration of the Legislature that all persons should be at liberty to carry on legitimate work and business on Sunday or on any other day or night.

The Supervisors are presumed to know the existence of the laws of the State, but, in violation of such legislative declaration made in February, the pernicious ordinance was adopted by them in the following June.

That the Supervisors, knowing the habit of the Chinese of working in laundries on Sunday, and the late hours of the night, and that these people compose nearly all the persons engaged in that business within the prescribed limits, to carry out their desire to oppress the Chinese by unjust discrimination, not only by preventing them from working during the night, but they also deprive them of the privilege awarded by the State to every person therein engaged in any other legitimate avocation or calling, to labor or pursue his business without restraint on Sunday, passed the prohibitory ordinance. The extension of the prohibition to Sunday renders apparent the intensity of the feeling of the Supervisors to pamper to the antipathy and hatred of the people mentioned and referred to in the applicant's petition, as well as their persistent determination to discriminate against and to the ruin of the Chinese; and to make the law apparently less obnoxious, the prejudice of Christians against labor on the Sabbath was thereby appealed to and invoked, to militate, hide and conceal the vicious discrimination which is made by said Section 4, in prohibiting work at night after ten o'clock P. M., or during the early hours of the morning.

II.

The provisions of said 4th Section of said ordinance, No. 1719, are unconstitutional.

14th Amend't U. S. Const.

1. Because, in the language of Justice Field: "Hostile and discriminating legislation by a State "against persons of any class, sect, creed or nation, "in whatever form it may be expressed, is forbidden by the Fourteenth Amendment of the Constitution. That amendment, in its first section, "declares who are citizens of the United States, "and then enacts that no State shall make or enforce any law which shall abridge their privileges "and immunities. It further declares that no "State shall deprive *any person* (dropping the distinctive term citizen) of life, liberty or property, "without due process of law, nor to deny *any person* "the equal protection of the laws. This inhibition "upon the State applies to all the instrumentalities "and agencies employed in the administration of its "government, to its executive, legislative and judicial departments, and to the subordinate legislative bodies of counties and cities. And the "equality of protection thus assured to every "one whilst within the United States, from whatever country he may have come, or of whatever "race or color he may be, implies not only that the "Courts of the country shall be open to him on the "same terms as to all others for the security of his "person or property, the prevention or redress of "wrongs, and the enforcement of contracts; but "that no charges or burdens shall be laid upon him

" which are not equally borne by others, and that " in the administration of criminal justice he shall " suffer for his offenses no greater or different pun- " ishment.

" Since the adoption of the Fourteenth Amend- " ment, Congress has legislated for the purpose of " carrying out its provisions in accordance with " these views."

* * * * * * * *

" It is certainly something in which a citizen of " the United States may feel a generous pride that " the government of his country extends protection " to all persons within its jurisdiction; and that " every blow aimed at any of them, however hum- " ble, come from what quarter it may, is " caught " upon the broad shield of our blessed constitution " and our equal laws."

" We are aware of the general feeling—amount- " ing to positive hostility—prevailing in California " against the Chinese, which would prevent their " future emigration hither, and expel from the " State those already here. Their dissimilarity in " physical characteristics, in language, manners " and religion, would seem, from past experience, " to prevent the possibility of their assimilation " with our people. And thoughtful persons, look- " ing at the millions which crowd the opposite " shores of the Pacific, and the possibility at no " distant day of their pouring over in vast hordes " among us, giving rise to fierce antagonisms of " race, hope that some way may be devised to pre- " vent their further emigration. We feel the force " and importance of these considerations; but the

" remedy for the apprehended evil is to be sought
" from the general government, where, except in
" certain special cases, all power over the subject
" lies. To that government belongs exclusively
" the treaty making power, and the power to regu-
" ulate commerce with foreign nations, which
" includes intercourse as well as trafic, and, with
" the exceptions presently mentioned, the power
" to prescribe the conditions of emigration or im-
" portations of persons. The State in these par-
" ticulars, with those exceptions, is powerless, and
" nothing is gained by the attempted assertion of
" a control which can never be admitted. The
" State may exclude from its limits paupers and
" convicts of other countries, persons incurably
" diseased, annd others likely to become a burthen
" upon its resources. It may, perhaps, also exclude
" persons whose presence would be dangerous to
" its established institutions. But there its power
" ends. Whatever is done by way of exclusion
" beyond this must come from the general govern-
" ment. That government alone, can determine
" what aliens shall be permitted to land within
" the United States, and upon what conditions
" they shall be permitted to remain ; whether
" they shall be restricted in business transactions
" to such as appertain to foreign commerce, as is
" practically the case with our people in China, or
" whether they shall be allowed to engage in all
" pursuits equally with citizens. For restrictions
" necessary or desirable in these matters, the appeal
" must be made to the general government ; and it
" is not believed that the appeal will ultimately be

"disregarded. Be that as it may, nothing can be "accomplished in that direction, by hostile and "spiteful legislation on the part of the State, or of "municipal bodies, like the ordinance in question— "legislation which is unworthy of a brave and "manly people. Against such legislation it will "always be the duty of the judiciary to declare and "enforce the paramount law of the nation."

Ah Kow vs. Nunan, 5 Sawyer, 552 and 562.

The above case is peculiarly instructive as bearing upon the case under consideration. The Ordinance known as the "Queue Ordinance," there held to be, under the Fourteenth Amendment, unconstitutional, was passed by the Board of Supervisors of the City and County of San Francisco, acting then as they have ever since acted, solely under an act of the Legislature, known as the "Consolidation Act," and the acts of the Legislature amendatory thereof, from which is derived all the power that Board possesses to pass Ordinances, and Justice Field in that case holds, that although the (Queue) Ordinance was on its face and by its terms applicable to all persons, without distinction of race, sect or color, but, it appearing from external evidence, that in passing the Ordinance by the Board of Supervisors, the Ordinance being in fact directed against the Chinese only, and imposing upon them degrading and cruel punishment, and, also, subject to the further objection, that it was hostile and discriminating legislation against a class, and forbidden by that clause of the Fourteenth Amendment to the Constitution which declares that no State "shall deny to any person within its juris-

" diction the equal protection of the laws." We insist the case at bar is in principle, analagous to the case last cited. That the petitioner's petition for a writ of Habeas Corpus sets forth facts which, if proven would establish that the passage of the Ordinance No. 1719, particularly Section 4 thereof, under which the petitioner was arrested and is now held, was the outcrop of the same prejudices, antipathies and hatred, and the creature of the same character of special and class legislation that brought into existence the " Queue Ordinance," so justly and properly held to be unconstitutional, and that the petitioner having tendered the issue, offered to substantiate the same by evidence, and being remediless in every other form of proceeding, the Circuit Court should have granted the writ prayed for, and therefore its judgment denying it, should be reserved. The fact that in every county, city and village in the State of California, the laundry business can be legally carried on by Chinese and persons of all nationalities, night and day, Sundays included, *except in a portion of the municipality of San Francisco*, it seems to us of significance sufficient to suggest that *prima facie*, the Ordinance was the result of that class character of legislation which is held to be inimical to the Fourteenth Amendment of the Federal Constitution ; that it in the language of the same learned Justice " is none the less manifest because of the " general terms in which it is expressed." (*Id*). And he also says : " Besides we cannot shut our " eyes to matters of public notoriety and general " cognizance, when we take our seats on the Bench

" we are not struck with blindness, and forbidden " to know as Judges what we see as men; and " where an Ordinance, though general in its " terms, it being universally understood that " it is to be enforced only against that race, " only operates upon a special race, sect or class, " we may justly conclude that it was the intention of " the body adopting it that it should only have such " operation, and treat it accordingly. We may " take notice of the limitation given to the general " terms of an Ordinance by its practical construc- " tion as a fact in its history, as we do in some " cases that a law has practically became obso- " lete." *Id.*

If the "Queue Ordinance" contained inherent evidence of its unconstitutionality, and special class legislation, which is prohibited by the Fourteenth Amendment, we insist the context of the Laundry Ordinance under consideration present the same palpable vices; and that if it was proper, as it was certainly just, from the circumstances shown, to award relief to the party injured in the former case, it would certainly be equally proper and just that the petitioner should be awarded a like opportunity to be heard, and if wrongfully imprisoned, restored to liberty. In the former case evidence *aliunde* was permitted to be given to show the "Queue Ordinance" was the result of unwarrantable class legislation, and if the same vice is not apparent on the face of the Ordinance set up in the petition of the petitioner in this proceeding, he is prepared to establish *aliunde* that it is of the same pernicious character. Justice Miller of this Court in Henderson vs. Mayor of New York, 92 U. S. R, 268. said:

" In whatever language a statute may be found, " its purpose must be determined by its natural and " reasonable effect." And in Chy Lung vs. Freeman, *Id.* 279, this Court enunciate and again recognize the same principle.

That the Circuit Court has jurisdiction to issue, hear and determine the writ cannot be questioned. Judge Sawyer held:

" The Statute of California prohibiting all aliens " incapable of becoming electors of the State from " fishing in the waters of the State, violates the " fourteenth amendment of the Constitution of the " United States, also, Articles V and VI of the " treaty with China, and is void."

In Re Ah Chong, and five others, 6 Sawyer, 451.

Judge Deady, U. S. District Judge for Oregon, held, on habeas corpus:

" The National Courts have jurisdiction to " relieve any person from imprisonment, under " color of the authority of a State without due " process of law, contrary to the fourteenth amend- " ment."

In Re Ah Lee, 6. *Id.* 410.

See also:

In Re Wong Yueng Quy 6, *Id.* 237.

In Re Tiburcio Parrott 6, *Id.* 349.

U. S. Revised Statutes, Chap. XIII, Sections 751 to 761, inclusive.

In Re Brosnahan, Federal Reports, Vol. XVIII.

In Re Tong, *Id.* p. 253.

The above case of In Re Tong was decided by Judge Deady, of the U. S. District Court of Oregon, in November, 1883, and involved the validity and constitutionality of an ordinance of the municipality of the city of Portland, (Oregon), entitled "An Ordinance to suppress gaming and gambling houses." The learned Judge holds that, a grant of power to a city "to suppress gaming and gambling houses" includes the power to suppress "gaming;" but, when the crime of gaming is defined, and the punishment therefor prescribed by the law of the State, the city is not authorized to suppress any game not prohibited by such law, nor to punish any person playing thereat; but, it is confined to the use of such means as may be within its power to enforce the State law within its limits, and that the law of the State of Oregon did not embrace the particular offence of gambling with which the petitioner in that case was charged, therefore the ordinance was void; also, that a person arrested and imprisoned for the violation of a void ordinance of a municipal corporation, is imprisoned by the State without due process of law, and therefore in violation of the Fourteenth Amendment, and may be discharged therefrom by the writ of *habeas corpus* issued from the proper court of the United States. *Id.*

2. Said Laundry Ordinance discriminates between the class of laborers engaged in the laundry business and those engaged in other classes of business, and is void. Sunday laws in this State have heretofore been upheld solely on the ground they were necessary as a sanitary measure, to

secure one day of rest out of the seven to laborers, and in all cases where they were upheld in California it was under general laws, which only excepted those classes of business which it was absolutely necessary to be carried on Sunday, such as hotels, restaurants, drug stores, etc.

Ex Parte Andrews, 18, Cal. 678.
Ex Parte Bird, 19, *Id.* 130.
Ex Parte Burke, 59, *Id.* 6.
Ex Parte Koser, 60, *Id.* 190.

But as before shown we have had no Sunday law in this State since February, 1883, unless said Laundry Ordinance is constitutional, and if it is, we have a Sunday law applicable to a very small portion of the great State of California, viz: about one-fourth of the territorial area of the municipality of the City of San Francisco, and to no other portion of the State. The Laundry Ordinance prohibits the laundry business from being carried on during Sundays, and in the night-time in certain portions of the city, and allows all other *classes* of business to be carried on continuously on Sundays and at all times of every day and night, within said portions, even though such other business may be what is called and known as extra hazardous, dangerous to the public or to the public health. What reason can be given for prohibiting the working of the laundry business on Sunday, and in the night-time of every day in the week, when every other business is permitted to be carried on on that day and for every hour of the week, night and day, we are at loss to determine.

Very many business callings and employments can only be profitably carried on except by relays of help nor unless the whole twenty-four hours of each day can be devoted to it continuously, Sundays included; and the business of conducting a laundry is peculiarly one of that character; and that business is just suited to the habits of the Chinese, who are willing to work as many hours as nature will permit, and the most prejudiced anti-Chinese politician will admit, if his bias will permit him to speak the truth, that the Chinese are the most particular people as regards cleanliness, of any class we have among us; the few hours they can command from work, sleep and the partaking of necessary food, is devoted for recreation to the libations of the bath. The laundry business, from its peculiarities requires that it should be carried on uninterruptedly, in order to economize, and take advantage of the elements, in washing, drying and ironing clothes, which, if permitted to remain in a wet state for a series of hours would mildew and thereby be destroyed, or seriously injured; and as a matter of economy in the business, it is necessary time and opportunity should be afforded to use the surplus heat generated by the fires used in washing and heating irons, for the drying of clothing.

3. Said Laundry Ordinance discriminates as to localities in which the business may or may not be carried on, without any good reason therefor. It prohibits the carrying on of the business in said city and county on certain streets, about one-fourth of the area of the city being within the prohibition,

but the business is permitted to be carried on in the other three-fourths of the city. There can be no other reason assigned for this discrimination than antipathy, hatred or prejudice against the Chinese, which has generated a determination to exclude them from this business, by a system of legislation of a class character. If the business is pernicious east of certain streets it must be equally so west of those streets. A laundry, or the business of it is not a nuisance *per se*, nor is the washing and ironing of clothing dangerous on account of fire, any more than is a hotel or restaurant. With as much propriety could the Board of Supervisors by ordinance prohibit proprietors of hotels and restaurants from cooking food for their guests and patrons east of Gough and Ninth streets, between the hours of ten o'clock P. M. and six o'clock A. M. of the next day, and on Sundays. The carrying on of the laundry business is not dangerous on account of fire any more than the thousand and one callings and employments about which heat is necessarily generated; certainly not more dangerous east than it is west of the streets mentioned; nor is it any more dangerous in the night than in the day-time, nor on Sunday more than on any other day of the week.

If the laundry business is a nuisance, or dangerous on account of fire, or to the health of the citizens, the evil should be remedied by confining it to prescribed localities, without resorting to unjust discrimination as to the hours of the day, or the days of the week it will be permitted to be carried on.

A laundry is not a nuisance.

In the matter of Quong Woo, on habeas corpus, decided by the U. S. Circuit Court for the District of California, which we can find reported only in Vol. IX, of the Pacific Coast Law Journal, at page 815, that Court, in the joint opinion of Justice Field and U. S. Circuit Judge Sawyer, say:

"But the business of a laundry—that is, the "washing of clothing and cloths of various kinds, "and ironing and pressing them to a condition to "be used—is not of itself against good morals, or "contrary to public order or decency. It is not "offensive to the senses, or disturbing to the "neighborhood where conducted, nor is it danger- "ous to the public safety or health. It would be "absurd to affirm that it is * * * * * "In the business of a laundry by itself, there is "nothing objectionable that may not be urged "against all occupations in the City and County."

5. It discriminates between the different classes of persons engaged in the business, and, therefore, is not of general and uniform operation.

It prohibits those who are engaged in the branch of washing and ironing from working, but it permits those engaged in the other branches of the business, such as fluting, polishing, blueing and wringing, all of which are separate and distinct branches of the business, and require separate and skilled workmen, which, under the the rulings of the Supreme Court of California, vitiates the ordinance.

Subdivision 2 of Section 25, Article IV, of the Constitution of the State of California provides;

"SECTION 25. The Legislature shall not pass "local or special laws in any of the following "enumerated cases, that is to say: * * * * * "Second—For the punishment of crimes and mis- "demeanors."

The Legislature of California passed a law entitled, "An Act to regulate and provide for a day "of rest in certain cases," making it a misdemeanor "for any person engaged in the business of baking "to engage, or permit others in his employ to en- "gage in the business of baking, for the purpose "of sale, between the hours of 6 o'clock, P. M., on "Saturday, and 6 o'clock, P. M., on Sunday, etc.," was held by the Supreme Court of that State to be special legislation, and inimical to the above subdivision of said section of the Constitution. That Court said: "The Act purports, according to its title, "to be an act to provide a day of rest. Instead of pur- "suing that intent, it goes on to say that certain "acts, viz.: the labor of baking for the purpose of "sale, if performed by certain persons, viz.: per- "sons 'engaged in the business of baking for the "purpose of sale,' shall constitute a crime, and "shall be punished. The employees are not to be "punished. This is special legislation. A cer- "tain class is selected. As well might it have said, "if master carpenters or blacksmiths, or if attor- "neys having clerks shall labor or permit employés "to labor, they shall be deemed guilty of a misde- "meanor and be punished; carpenters or black- "smiths, not master workmen, or attorneys with- "out clerks may labor at their will. * * * * "Even if there be anything to restrain the laborer

" on some one day, it must be, if at all, under a gen-
" eral restraining law restraining labor on that
" day."

This decision was made by the Court in Bank. The petitioner was discharged.

Ex-Parte Westerfield, 55 Cal., 550.

5. It will be observed that the petitioner in the case under consideration, sets forth in his petition (see Transcript) that he is not a proprietor of a laundry, but " has been engaged in working for " hire in a public laundry in the City and County " of San Francisco," etc.

The case of Ex-Parte Westerfield (*supra*) 55 Cal., 550, and Soon Hing would be parallel, the former being a laborer in a bakery, and the latter a laborer in a laundry, except that our unfortunate client is a Chinese, and therefore, according to the logic of the Supervisors of San Francisco, is not entitled to the same protection under the laws of this free government, that is awarded to the Celt, Saxon, Caucasian, or the Jamaica negro.

6. Said ordinance, if enforced, deprives a man of an inalienable right—the right to labor, and thereby to acquire property—a right guaranteed to him by the fundamental law of every State of our Government and by the Federal Constitution.

The right of labor is an inalienable right.

In re Parrott, 6 Sawyer, 347.

The privileges and immunities which, under the treaty between the United States and the Empire of China, the Chinese are entitled to enjoy to the

same extent as enjoyed by the subjects of the most favored nation, are all those rights which are fundamental, and of right belong to citizens of all free governments; and among them is the right to labor, and to pursue any lawful employment in a lawful manner. Property is everything that has an exchangeable value. Labor is property, and the right to make it available is next in importance to the right of life and liberty. (*Id.*)

It would be special and *class* legislation to provide by law that one class of persons should labor only ten hours each day in the laundry business, and that another class of persons could labor twelve hours at the same business. Yet that is the effect of the laundry ordinance. Those persons engaged in the laundry business are in certain localities limited to six days' labor in the week, and to 16 hours of these days, while those persons engaged in the same business in other localities in the municipality can labor as many hours of the seven days of the week as they desire to, or the exigencies of business demand.

The Supreme Court of California in construing a statute of that State which attempted to limit the hours of labor of laborers in contracts for the grading of streets in San Francisco to eight hours per day. (Statutes of California, 1867—8 p. 63), held that no law can be constitutional which prohibits any class of laborers, or laborers generally from working more than a specified number of hours per day; that under such contracts laborers could not be compelled to work more than eight hours each day, that it was optional with them, the

contractor consenting, whether they should, or should not; but, they could not be compelled to work more than that number of hours per day; that if the contractor consented and they acquiesced and worked sixteen hours per day, they were entitled to compensation for two days work. In other words, so far as those contracts were concerned, every eight hours of labor was equivalent to one days work; that every hour's work in excess of eight hours per day was *extra work* for which the laborer performing it was entitled to *extra* pay, *pro rata*—as one hour is to eight; or as expressed by Sanderson C. J. "Hence under this statue, if "wages are two dollars per day, the laborer can be "required to work only eight hours for it; but "there is nothing it which prevents him from work-"ing two hours more as *extra work*, or as part of "another days work, and receiving fifty cents *extra* "*pay* therefor."

Drew *vs.* Smith, 38 Cal. 325.

And among other reasons given in the same case by that Court why it would be in excess of Constitutional power for the legislature to prohibit laborers from working for Street Contractors more than eight hours of a given day, is that it may be absolutely necessary for a man, in order to support himself and family, to labor more than eight hours per day, or to do *extra work* for *extra pay* for that purpose. If it is, or may be, "absolutely necessary for a laborer to work more than eight" or even sixteen, *or more* hours per day to earn regular or extra pay, to enable him to support himself and his

family, it requires no other reason, or argument, nor any citation to authorities to establish that a law any State Legislature may pass, depriving a laborer of the right to labor only a certain number of hours, and not to labor as many hours in a day he should deem necessary, would be unconstitutional. Nature impresses such laws with the stigma of unconstitutionality; and humanity repels and abhors them, as being tainted with Special Legislation, as well as unconstitutionality—even though the victim be a Mongolian.

The Legislature, being prohibited by the Constitution, Federal or State, from indulging in special legislation, it cannot delegate power to so legislate to a municipality.

And, in this connection, we call the attention of the Court to the further injustice which must necessarily be perpetrated if the ordinance is to be enforced, to the allegations in the petition that on the 1st day of January, 1884, petitioner's employer paid to the License Collector of the municipality of San Francisco the sum of six dollars, the amount required by law, and therefor procured the issuance to him of a license authorizing, permitting and allowing him to conduct the business of a public laundry within the district described in Section one of this ordinance. The City of San Francisco after giving a license permitting a person to carry on the laundry business within certain limits, arrests and imprisons one of the persons he employs to do the work he is so licensed to do, and employ others to do, for working in pursuance of the terms of such license. And the petitioner also alleges in

his petition, that he has been engaged for hire for several years in a public laundry in said city, and has in all respects complied with the laws of the United States, of the State of California, and the ordinances of said city, except as regards the ordinance under consideration.

7. We have had two adjudications in California as to the constitutionality of Section 4 of said laundry ordinance, No. 1719.

In *Ex-parte* Woo Yeck, on Habeas Corpus, application having been made to the Supreme Court of California, by petition, in his behalf for the writ, which was granted by Hon. James S. Thornton, one of the Justices of that Court, but, it was made returnable before Hon. Noble Hamilton, one of the Judges of the Superior Court of the County of Alameda in that State. Judge Hamilton, after a patient hearing and examination, and upon due consideration. held the ordinance to be "unreasonable, unjust, discriminating, unauthorized by law, and void;" and discharged the petitioner from imprisonment.

For the many cogent reasons given in support of the conclusion Judge Hamilton arrived at, the logic of the decision, and the ability displayed therein by that able and learned gentleman, for the convenience of this Court, we append a copy of the decision to this brief.

It will be observed Judge Hamilton's decision was confined entirely to that portion of Section 4 of said ordinance, which has reference to working between the hours of 10 o'clock P. M., and 6 o'clock

of the next day, of week days, as is in the case under consideration, and had no application to work performed on Sunday.

In *Ex Parte* Moynier, 1 West Coast Journal, p. 782, in Department No. 2 of the Supreme Court of the State of California, three of the seven judges of that court, sitting in that department, held said ordinance to be valid, and could be legally enforced. With due deference to that court, we submit the case is not satisfactory, and was not well considered, and does not give the law, and entirely ignores Smith *vs.* Drew, (*supra,*) 38 Cal., 325, and, also, *Ex Parte* Westerfield, (*supra,*) 55 Cal., 550, which was decided by that court in banc five judges concurring. The question as to laboring after 10 o'clock p. m., &c., is there disposed of in a half-dozen lines by the following argument (?):

"We cannot say it is not necessary for the proper police "and sanitary condition of the city that the business referred "to should cease during the hours from ten o'clock p. m. to "six o'clock a. m. and during the day known as Sunday."

We, also, for the convenience of this Court, append a copy of said last decision hereto.

SUMMARY.

We submit—

1st. That the ordinance is discriminating and special.

2d. That it deprives the petitioner of a constitutional privilege, viz: the right to labor at all times.

3d. That petitioner is unlawfully imprisoned.

4th. That said ordinance is in contravention of the Burlingame treaty.

5th. That it is unconstitutional under the provisions of the Fourteenth Amendment of the Constitution of the United States.

6th. That it is unconstitutional under the provisions of Section 25, of Art. IV, of the Constitution of the State of California.

7th. That it is oppressive.

III.

The action of the Circuit Court in denying the writ of Habeas Corpus is appealable to this Court.

U. S. Revised Statutes, Chap. XIII, Section 763, Subdivision 2, and Section 764.

This Court have had and entertained appellate jurisdiction in Habeas Corpus cases originating in U. S. Circuit Courts ever since the passage of the Judiciary Act, of 1789. (1 U. S. Stat. at Large, p. 82, Sec. 82).

Ex Parte McCardle, 6 Wall., 318.
Ex Parte McCardle, 7 *Id.*, 506.
Ex Parte Yerger, 8 *Id.*, 85.

Respectfully submitted.

THOS. D. RIORDAN,
DAVID McCLURE,
Of Counsel for *Plaintiff in Error.*

APPENDIX.

In the case of *Ex parte* WOO YECK on Habeas Corpus, petitioner applied to the Supreme Court of the State of California for a writ of habeas corpus. A writ was issued by order of his Honor Judge Thornton, one of the Justices of that Court, and made returnable before Hon. Noble Hamilton, one of the Judges of the Superior Court of Alameda County, in said State. The case there was argued and submitted, and Judge Hamilton rendered a decision declaring the Ordinance unconstitutional, which decision is as follow:

"*In the Superior Court of the County of Alameda, State of California, Department No.* 3.

"IN RE WOO YECK ON HABEAS CORPUS.

"Hon. N. Hamilton delivered the opinion of the Court:

"The petitioner, in whose behalf the writ was granted by the Supreme Court of this State, returnable before the undersigned Judge of the Superior Court of Alameda County, Department 3, for hearing and determination of the matters alleged, and the same having been heard and tried, and the matters having been argued by the attorneys on behalf of the municipality and on behalf of petitioner, and the respective attorneys having filed their briefs, and the matter having been submitted for decision,

and having been duly considered, the following decision is rendered, to-wit:

"The petitioner is in custody of Patrick Crowley, as Chief of Police of the City and County of San Francisco, upon process issued out of the Police Court of said city and county, upon a complaint filed therein charging said Woo Yeck with misdemeanor, for having, as is alleged, violated Section 4 of Order No. 1719 of the Board of Supervisors of said city and county, entitled 'An Order Regulating the Establishment and Maintenance of Public Laundries and Public Wash-houses in the City and County of San Francisco.' Said Section 4 is as follows:

"SECTION 4. No person or persons owning or employed in the public laundries or public wash-houses provided for in Section 1 of this Order shall wash or iron clothes between the hours of 10 o'clock P. M. and 6 o'clock A. M., nor upon any portion of that day known as Sunday.

"The complaint charges that said Woo Yeck, on or about the 28th day of August, A. D. 1883, committed a misdemeanor by violating that portion of said Section 4, which forbids any of the persons named therein from washing or ironing clothes between the hours of 10 o'clock P. M. and 6 o'clock A. M.

"The question argued and sought to be determined is as to the validity of said Section 4 of said Order.

It may be conceded that if there is anything in the nature of this business itself, or the mode of conducting it, that makes it or causes to become a nuisance, as a nuisance is defined by the general laws of the

State, in the Penal Code, the Civil Code and the Code of Civil Procedure, *and in no other case*, then the Board of Supervisors of said city and county are empowered by the Consolidation Act and the New Constitution by proper Order to prevent or summarily remove such nuisances, or they may pursue the remedies for their abatement provided in said Codes.

"But if there be nothing in the business itself nor in the mode in which it is carried on to constitute it a nuisance, is defined by the Codes aforesaid, and all the regulations of the municipal corporation to secure protection from fire, to preserve the health of the community by having proper sewerage, so that neither the public peace, health, morals or safety of the community is endangered thereby, have been complied with, by the person or persons owning or carrying on the business, or employed therein, then neither the municipality of San Francisco, nor the Legislature of the State, nor any other power under this Government, can go farther and interfere with the business by prescribing the hours within which portions of said business shall or shall not be carried on, and during which laborers employed therein shall or shall not labor. An order of the Board of Supervisors that attempts this, as is the order in question, is an unjust, unreasonable and unwarrantable interference with the natural and inalienable right of every individual under this government to life, liberty and the pursuit of happiness, and to acquire, hold and enjoy property, rights never surrendered to government, which are fully recognized and pro-

tected by the Constitution of the United States and of this State, and in order to acquire property or to obtain an honest livelihood, such individual may labor during any hours of the day or night as he may voluntarily select, or his necessities may force him to employ. If this ordinance can be sustained as to the laundry business, then a similar order can be enforced as to every business, and the Board of Supervisors of San Francisco may as well enter into the printing establishments and prescribe the hours of the day or night within which it shall be lawful to set type, or run their presses, and thus create confusion confounded ; or if this business be selected for such regulation on account of the noise attending the washing and ironing of clothes, as contended by counsel for the municipality, why not as more noisy, have forbidden the entry into the city before sunrise of meat wagons, vegetable and milk wagons, and forbid the various manufactories that run day and night from operating, or stop the steam engines, and forbid the running of railroad trains during certain hours at night; or why not require the various places of amusement and saloons to close business after 10 o'clock P. M., or in fact, enter into and regulate the hours and modes of work of any laborber or business carried on in the city.

"I am of the opinion that Section (4) of said Order No. 1719 is unreasonable, unjust, discriminating, unauthorized by law and void.

"It follows, the defendant is unlawfully restrained of his liberty and must be discharged, and it is so ordered and the writ dismissed."

Supreme Court

OF THE STATE OF CALIFORNIA.

"*Ex-Parte* Moynier. Department Two. Filed February 8th, 1882.

"Application for a writ of *Habeas Corpus*. The opinion states the facts:

"MYRICK, J. The prisoner was arrested and is in custody for a violation of Section 4, of Order No. 1719, of the Board of Supervisors of the City and County of San Francisco. The ordinance was approved June 25th, 1883. Section 4 declares that "no person or persons owning or employed in the public laundries or public wash-houses, provided for in Section 1 of this order, shall wash or iron clothes between the hours of ten o'clock, P. M., and six o'clock, A. M., nor upon any portion of that day known as Sunday." Section 1 declares it to be unlawful for any person to establish, maintain or carry on the business of a public laundry or wash-house, where articles are cleansed for hire, within certain named limits, without first obtaining a certificate from the health officer that the premises are sufficiently drained, and that the business can be carried on without injury to the sanitary condition of the neighborhood, and a certificate from the Board of Fire Wardens that the heating appliances are in good condition, and that their use is not dangerous to the surrounding property. The petitioner claims that the order is void, in that it

conflicts with the Fourteenth Amendment to the United States, and with Sections 1, 11 and 21 of Article I of the Constitution of this State.

"We do not see that the enforcement of this order would abridge the privileges or immunities of citizens of the United States, or that it would deprive any person of liberty or of property without due process of law, or deny to any person in this State the equal protection of the laws. Section 1 of Article I of the Constitution of this State declares that all men have the inalienable right of acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness; Section 11 of the same Article declares that all laws of a general nature shall have a uniform operation; and Section 21 declares that no citizen or class of citizens shall be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

"We do not deem it necessary to go into an elaborate and extended consideration of the propositions advanced, nor to do more than quote another section of the State Constitution, and show its application to the subject in hand. Section 11 of Article XI provides, that "any county, city, town, or township may make or enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws."

"That the regulations of the order are, as to portions (perhaps all), police regulations, and, as to some, sanitary, we have no doubt. Those portions of the order relating to safety from fire, are police regulations; that relating to drainage, may also be classed as police, and is sanitary; that relating to

drainage is also sanitary. It is true, all persons may acquire, possess and protect property, and may pursue and obtain safety and happiness; but these rights must be exercised with reference to the rights of others; and whenever it is necessary for the health or protection of members of the community that regulations should exist and be enforced, the power is given by the Constitution to local authorities to make and enforce such regulations. We cannot say that proper drainage in carrying on the laundry business is not necessary to health neither can we say that property is secure from fire if proper precautions are not taken.

"The order is not discriminating and special, in any such sense as to make it repugnant to the Constitution. Its terms apply to all persons establishing, maintaining or carrying on the business of a public laundry or public wash-house where articles are cleansed for hire within certain limits. It is no more special and discriminating than the prohibition of the storage of powder, or the slaughtering of animals, both of which may be necessary to be done, but for the regulation of which the power is unquestioned. We cannot say the limits prescribed in the order are not proper limits for public health and safety. As to the provisions of Section 4 of the order, which the petitioner was charged with having violated, we cannot say it is not necessary for the proper police and sanitary condition of the city that the business referred to should cease during the hours from 10 o'clock P. M. to six o'clock A. M., and during the day known as Sunday.

"The petitioner is remanded."

MORRISON, C. J., and THORNTON, J., concurred.

114-113

DEC 8 1884
JAMES H. McKENNEY,

SPECIAL APPEARANCE FOR DEFENDANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 1181.

SOON HING, PLAINTIFF IN ERROR,

vs.

P. CROWLEY, DEFENDANT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, NINTH JUDICIAL CIRCUIT DISTRICT OF CALIFORNIA.

THOMAS D. RIORDAN, Attorney for the Plaintiff in Error.

H. G SIEBERST, appearing specially for the Defendant, to object to writ of error and citation.

ALFRED CLARKE, of Counsel.

Address of Counsel for Defendant, Old City Hall, San Francisco.

Donovan & Shahan, Law Printers, 521 Clay St., San Francisco, Cal.

In the Supreme Court of the United States.

No. 1181. OCTOBER TERM, 1884.

SOON HING,
vs.
P. CROWLEY.
} *Special Appearance for Defendant.*

To the Hon. the Supreme Court of the United States:

The undersigned appears as counsel for the defendant especially for the purpose of calling the attention of the court to the irregularity of the writ of error, citation and service thereof, as will more fully appear upon inspection of the transcript and examination of the following suggestions. The undersigned does not appear for any other purpose.

In this case the proceedings below were all ex parte. The defendant did not appear in the circuit court and had no notice of the proceeding.

The judgment sought to be reversed was rendered April 7, 1884. The writ of error should have been taken out before the commencement of the 1884 October term of this court. (Rule 8, sec. 5.)

The decision was given more than thirty days before the commencement of the present term, and under rule 9, secs. 1 and 4, the writ should have been served before August 6, 1884.

The writ of error and citation were issued and served in San Francisco October 21, 1884, commanding the defendant to appear in Washington on the 3d Monday of October, 1884, viz, October 20th, an impossible day, because already passed.

The defendant did not file the transcript, as permitted by rule 9, sec. 2, and plaintiff had lost his right to file it.

The writ of error and citation cannot be regarded as an idle form. The first is to bring the case properly before the appellate court; the second to give the defendant reasonable notice to attend and present his defense. These great safeguards of the law should not be trifled with, and we are confident that this court will not permit to pass without reproof the loose and irregular proceedings to which we have directed its attention.

The defendant, therefore, prays that the proceeding be dismissed for want of jurisdiction, apparent on the face of the transcript.

Respectfully submitted,

H. G. SIEBERST,

Appearing specially as counsel for the defendant.

Appendix.

Without appearing for the defendant otherwise than as hereinbefore stated and merely for the purpose of aiding the court, the following memorandum, prepared by ALFRED CLARKE, Esq., of the San Francisco bar, is annexed hereto:

The imprisonment set forth in the petition is not unlawful.

The police judges' court had jurisdiction under its organic act. (Statutes 1863-4, page 30.)

"Of an action or proceeding for the violation of any ordinance of the city and county of San Francisco," and by the same statute it had jurisdiction of all *misdemeanors* committed within the city and county of San Francisco. Violations of city ordinances are made misdemeanors by statute.

The constitution of California, art. 11, sec. 11, confers power on the municipality "to make and enforce all such local, police, sanitary and other regulations as are not in conflict with general laws."

The board of supervisors is empowered by statute to pass ordinances and to fix the penalties for violation thereof, "not exceeding six months imprisonment, or one thousand dollars fine." The police court must then have power to *hear and determine* a complaint *or charge* made before it in due form of proceeding, by which a person is claimed to have done certain acts which are supposed and alleged to be in violation of some ordinance of the city—that is, it must have *jurisdiction* over the *subject matter* in such case. It may decide right; it may, possibly, as other courts may, decide wrong. In neither case does it go beyond its *jurisdiction*. A *wrong* or *erroneous* decision is no more *unlawful*, in the legal acceptation of that term, in the law of habeas corpus, than would be a *right* decision, or one which might be pronounced to be *right* by a court of appeal. Jurisdiction *to hear and determine* charges of the commission of offenses must necessarily be lodged somewhere, and must be final somewhere; and it exists in, and is final in, just such tribunals and officers as the constitution and statutes have appointed in each particular instance. The jurisdiction over *misdemeanors* for violation of municipal ordinances has been vested by the statutes of California, made in pursuance of the constitution, in the police courts of cities. And these courts, consequently, have power to decide every question rising in the course of proceedings over which they have jurisdiction; and every such decision is *legal*, and must stand as *lawful* to the end of time, unless reversed by some court having jurisdiction to review and reverse the same.

The police court cannot exercise this power unless it has power to bring the offender before it.

The transcript [not having received a copy we are unable to refer to page or folio] shows "that upon said complaint a warrant was issued by said judge, and said warrant was served, and the said Soon Hing was thereafter taken into custody." The transcript shows no further proceedings.

Every fact stated in the transcript might be true, and the defendant might have been acquitted on the merits, not having been guilty of the act charged, or the police court (for anything that appears to the contrary in the transcript) may have declared the ordinance unconstitutional and discharged the prisoner.

The presumption is in favor of the jurisdiction of the court and the validity of the order. If the order is invalid the presumption is that the police court will correctly expound the law and so declare it. The imprisonment is not unlawful because the court must hold its prisoner until it decides that it has or has not jurisdiction. It would be otherwise if the petitioner was convicted, because then it might be made to appear on the face of the petition that the petitioner was convicted under an unconstitutional order which really was no law.

But it must be held that until the police court decides the question of jurisdiction it has jurisdiction.

Unquestionably the police court has jurisdiction to decide the order to be unconstitutional. If it has this jurisdiction it has jurisdiction to decide that the order is constitutional.

The writ of habeas corpus is not a substitute for a writ of error or appeal, and to attempt to make it so is an abuse of the writ.

It does not appear from the petition of Soon Hing that he has been convicted, or that he raised the question of the constitutionality of the order, and that the police court wrongfully decided that question against him, or that he has waged his law in the highest court having jurisdiction to try the charge,

That preliminary step is necessary in order to give a federal court jurisdiction in such a case. Otherwise no city order could ever be enforced, because no federal court can take original jurisdiction and examine the order *before* the attempt is made to enforce it. If the police court cannot act lawfully in giving operation to the order until its validity has first been determined by the federal court, the order could never be enforced at all, because the federal court could not decide on the validity of the order until the police court had put the order in operation by making an arrest, and the police court could never make the arrest because it could never know that the federal court would sustain the validity of the order.

The way out of this labyrinth is clear and easy. The police court has jurisdiction to proceed until the question of the validity of the order is determined. If the decision is against the order the prisoner goes free, and has no need of habeas corpus. If the court wrongly decides the question of the validity of the order, the matter can be lawfully corrected by appeal and writ of error.

There have been a few cases in which, by consent of both parties, this point of practice was waived and a decision obtained in a habeas corpus proceeding where both parties had agreed to present the case on the simple question of the constitutionality of the law, but the practice is irregular and should not be encouraged.

Watkins' case, 3 Pet. 193; Ex parte Parks, 93 U. S. 18; Ex parte McCormack, 4 Park. C. R. 9; People v. Cavanagh, 2 Parker C. R. 650; Re Harris, 47 Mo. 164; Re Callicott, 8 Blatchford, 89; Re Eaton, 27 Mich. 1; Crandall's case, 34 Wis. 177; Re Semlar, 41 Wis. 517; Re Tweed, 60 N. Y. 559; Platt v. Harrison, 6 Iowa, 79; Re Coryell, 22 Cal. 179; Re McCullough, 35 Cal. 97; Re Murray, 43 Cal. 455; Re Hartman, 44 Cal. 32; Re Max, 44 Cal. 579; Re Riley, 2 Pick. 172; People v. Shay, 3 Park. Cr. Rep. 562; Re Fisher, 6 Neb. 309.

The defendant in this case had no notice of the proceeding in the circuit court, and had no opportunity to be heard upon this or any question in the case.

The appellate jurisdiction of this court is intended, under sec. 709 of the revised statutes of the United States, to be exercised to correct "the final judgment or decree in any suit in the highest court of a state in which a decision could be had, where is drawn in question the validity of an authority exercised under any state on the ground of being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of the validity" of the authority.

The transcript shows that the plaintiff is in the lawful custody of a state court of competent jurisdiction for an imputed violation of the so-called "laundry ordinance" of San Francisco. No final judgment of the highest court in the state in which the decision could be had appeared in this case.

It would be an inversion of the regular order of proceeding to permit the question of the validity of the "ordinance" to be decided in this suit because the case is improperly brought. The record discloses no urgency or excuse for this irregular proceeding. The plaintiff should have waged his law in the police court, and if the decision was against him he should by appeal have brought his case to the superior court, which is the highest court having jurisdiction to try persons arrested for violations of city ordinances. If the judgment was against him he could have brought his writ of error to correct the judgment.

In habeas corpus proceedings the supreme and the superior courts are peers. (Santa Cruz v. Santa Clara, 62 Cal, 40.)

The validity of the ordinance was affirmed by the superior court of San Francisco in Re Woo Yeck, November 2, 1883, and by the Supreme Court of California in Ex parte Moynier, February 8, 1884, and in Re Soon Hing, March 13, 1884.

Neither of these cases were brought here by writ of error.

Had they been, both sides would have had sufficient notice and time for preparation.

The transcript in this case discloses no reason why, with insufficient notice and defective service, these well considered decisions should be collaterally attacked in a proceeding in which it does not

appear of record that the plaintiff has exhausted his primary remedies.

"Upon the state courts, equally with the courts of the union, rests the obligation to guard, enforce and protect every right guaranteed or secured by the constitution of the United States and the laws made in pursuance thereof, whenever these rights are involved in any suit or proceedings before them; for the judges of the state courts are required to take an oath to support that constitution, and they are bound by it and the laws of the United States made in pursuance thereof, and all treaties made under this authority, as the supreme law of the land, 'anything in the constitution or laws in any state to the contrary notwithstanding.' If they fail therein, and withhold or deny rights, privileges, or immunities secured by the constitution and laws of the United States, the party aggrieved may bring the case from the highest court of the United States in which the question could be decided, to this court for final and conclusive determination" (Robb v. Connolly, 4 Sup. Ct. Reporter, 551. May, 1884.)

The plaintiff has probably proceeded under sec. 693, R. S. U. S., but we suggest that he has mistaken his remedy. The section says, the matter "may be reviewed, etc., on writ of error or appeal, *according to the nature of the case*, and subject to the provisions of law applicable to other writs of error," etc.

We respectfully submit, that according to the nature of this case, it should have been brought under section 709, and not under section 693, and that the question of the validity of the order is not properly presented.

No good can result from tolerating such loose and irregular proceedings, and they ought to be discouraged.

The Ordinance is Valid.

The Power of the Board of Supervisors to Pass the Order in Question, and the Decisions of the Supreme Court Pertinent Thereto.

Section 1. The board of supervisors shall have power * * *

9th To prohibit the erection of wooden buildings or structures within any fixed limits, where the streets have been established and graded, or ordered to be graded; or to regulate the sale, storage and use of gunpowder, or other explosive or combustible materials or substances, *and to make all needful regulations for protection against fire.* (Sec. 74 of the consolidation act, as amended May 18th, 1861. Stat. 1861, p. 544.)

Section 1. The board of supervisors shall have power * * *

1st. To regulate the police and police force of said city and county, and to prescribe their powers and duties.

2d. To authorize and direct the summary abatement of nuisances; to make all regulations which may be necessary or expedient for the preservation of the public health, and the prevention of

contagious diseases; to provide, by regulation, for the prevention and summary removal of all nuisances and obstructions in the streets, alleys, highways and public grounds of said city and county; and to prevent or regulate the running at large of dogs, and to authorize the destruction of the same, when at large contrary to ordinance.

3d. To prohibit and suppress, or exclude from certain limits, all houses of ill-fame, prostitution and gaming, to prohibit and suppress, or exclude, from certain limits, or to regulate, all occupations, houses, places, pastimes, amusements, exhibitions and practices which are against good morals, contrary to public order and decency, or dangerous to public safety. (Sec. 1, act to confer, etc., approved April 25, 1863, stat. 1863, p. 540.)

Sec. 3. The board of supervisors * * * shall have power * * * to regulate all such callings, trades and employments as the public good may require to be licensed and regulated, as are not prohibited by law (Sec. 3, act of March 30, 1872, stat. 1871-2, p. 736)

Art. 11, sec. 11, const. Cal.: A. D. 1879

Any county, city, town or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws. (Const Cal., art. 11, sec 11.)

The decisions bearing on the validity of the ordinance are—

Ex parte Shrader, 33 Cal. 297; Ex parte Keating, 38 Cal. 702; Ex parte Delaney, 43 Cal. 478; Ex parte Ah Toy, 57 Cal. 92; Ex parte Cassinello, 62 Cal. 538; Ex parte Ah Sing, 59 Cal. 404; Ex parte Chin Yan, 60 Cal. 78; Los Angeles v. S. P. R. R Co, 61 Cal. 59; Ex parte Stuart, 61 Cal. 374; Ex parte Benninger, 12 Pac. Coast Law Journal, 301.

The opinion of Judge Hamilton in the case of Woo Yeck which is relied on by the plaintiff, was expressly overruled by the Supreme Court of California, in the following decision:

Supreme Court of the State of California.

"Ex parte Moynier. Department two. Filed February 8th, 1884.

"Wilson & Perry, for petitioner. Thomas D. Riordan, *amicus curiæ*

" Alfred Clarke, for respondent.

"Hearing on a writ of habeas corpus. The opinion states the facts:

" MYRICK, J. The prisoner was arrested and is in custody for a violation of section 4, of order number 1719, of the board of supervisors of the city and county of San Francisco. The ordinance was approved June 25th, 1883. Section 4 declares that 'no person or persons owning or employed in public laundries or public wash-houses, provided for in section 1 of this order, shall wash or iron clothes between the hours of ten o'clock P. M. and six o'clock A. M., nor upon any portion of that day known as Sunday.' Section one declares it to be unlawful for any person to establish, maintain or carry on the business of a public laundry or wash house, where articles are cleaned

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Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 1181.

SOON HING,
Plaintiff in Error,

vs.

P. CROWLEY, &c.,
Defendant in Error.

Answer to Objection to Citation.

DAVID McCLURE,
THOS. D. RIORDAN,
Counsel for Plaintiff in Error.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 1181.

SOON HING, PLAINTIFF IN ERROR,

vs.

P. CROWLEY, &c., DEFENDANT IN ERROR.

ANSWER TO MOTION TO DISMISS.

Defendant in error has filed a document styled an "objection to writ of error and citation." Counsel appears specially for the purpose of making the objection. There is no motion to dismiss accompanying the objection, unless the prayer at the end of the objection can be considered as such motion. Defendant is not entitled to be heard on the motion, because no notice has been given to plaintiff in error or his counsel of such motion.

Rule 6, secs. 3, 4.

The first ground of defendant's motion is that the writ of error should have been taken out before the commencement of the October term of this Court, because the judgment sought to be reversed was rendered April 7, 1884, and in support of this he refers to Rule 8, sec. 5. That rule simply provides that where the judgment is rendered more than thirty days before the term, the writ of error must, *if* taken out *before* the term, be made returnable on the first

Monday thereof, but there is nothing in the rule which says that the writ of error *must* be taken out before the term. Besides, the statute gives plaintiff in error the right to sue out a writ of error at any time within a year after the entry of judgment.

Desty's Fed. Proc., sec. 635.

The second ground of defendant's motion to dismiss is that the citation was served on the 21st, whereas the writ of error was returnable on the 20th. This is not fatal. If an error at all, it does not prejudice the right of defendant.

"A rigid and literal fulfillment of everything prescribed is not an indispensable requisite to the jurisdiction of the Supreme Court."

Mussina *vs.* Cavozos, 6 Wall., 355.

"The citation is simply a notice to the opposite party to appear or decline to appear."

Cohens *vs.* Virginia, 6 Wheat., 264.

"A clerical error in it will not vitiate the proceedings."

Davidson *vs.* Lainer, 4 Wall., 447.

It makes no difference when the citation is served. As the only object of the citation is to give the adverse party notice that the case is in this Court, it is sufficient if it is served a reasonable time before the hearing.

"A service of the citation *after the return day,* but during the return term, is sufficient."

O'Dowd *vs.* Russell, 14 Wall., 402.

Besides, the objection is not a ground for a motion to dismiss, and is only available for the purpose of preventing a hearing at the present term.

Welsh *vs.* Mandeville, 5 Cranch, 321.

Lloyd *vs.* Alexander, 1 Cranch, 365.

Furthermore, the objection can be cured by amendment, if the Court deems it necessary.

Desty's Fed. Proc., sec. 1005.

If the writ is made returnable on the wrong day, or the day is described imperfectly, or left blank, it may be amended by inserting the proper return day, and a new citation may be issued.

Nat. B'k *vs.* Bank of Commerce, 99 U. S., 608.
Hampton *vs.* Rouse, 15 Wall., 684.
McVeigh *vs.* U. S., 8 Wall., 640.
Mossman *vs.* Higginson, 4 Dall, 12.
Atherton *vs.* Fowler, 91 U. S., 143.
Dayton *vs.* Lash, 94 U. S., 112.

In addition, we claim that the service of the citation in this case was unnecessary. The object of the citation is to give the adverse party notice. There was no adverse party in this case in the court below. The proceeding was an *ex parte* application for a writ, and the application was denied by the court of its own motion. The service of the citation, therefore, was purely an act of courtesy, and not one of necessity, and defendant should not be permitted to complain.

Another ground of defendant's motion to dismiss is, that the circuit court had no jurisdiction, because the suit in which defendant was arrested had not proceeded to a final judgment. In answer to this it is sufficient to say that we know of no rule or principle of law which compels a man when arrested to wait until a trial and judgment in that suit before he can sue out a writ of *habeas corpus* to test the legality of his imprisonment, and more especially in a case where the alleged illegality of the imprisonment is that the statute, with a violation of which he is charged, is unconstitutional.

The delays attendant upon trials of criminal cases are

long and vexatious, and sometimes months and even years elapse before a final judgment is had in a case. To claim that a defendant must wait until judgment and probably remain incarcerated in the interval before he can sue out his writ is preposterous. What is the necessity of a trial and judgment when the illegality of the imprisonment is alleged to be the insufficiency of the complaint, or a defect in the warrant of arrest, or, as in this case, the unconstitutionality of the statute which the defendant is charged with having violated. The proposition is too absurd to merit argument.

The last ground of defendant's motion to dismiss is that the questions involved in this case should have been brought to this Court by writ of error from the State court, and not by writ of error from the circuit court.

It appears from the transcript in this case that the question involved herein was determined in another case by the State court, and defendant's argument is that we should have sued out a writ of error from that judgment, and that we had no right to a writ of *habeas corpus* in the circuit court.

The only answer necessary to this remarkable proposition is, that the petitioner herein was not a party to those proceedings, and that it is not necessary to exhaust our remedies in the State courts before applying to the circuit courts for relief.

The circuit court has jurisdiction to hear and entertain applications for writs of *habeas corpus* in all cases where the question involves a right under a treaty or the United States Constitution, as in this case.

U. S. Rev. Stat., sec. 753.

And where there is a certificate of opposition of opinion in the circuit court in any civil suit or proceeding, the case may be brought to this court by writ of error.

U. S. Rev. Stat., sec. 693.

This Court has repeatedly held that a *habeas corpus* proceeding is a civil proceeding.

"An application for writ of *habeas corpus*, and questions arising thereon, may be certified."
Ex parte Milligan, 4 Wall., 2.

We submit, therefore, that the motion should not be entertained for failure to serve notice, as required by Rule 6, and, if entertained, that it should be denied for the reasons stated.

Respectfully,

DAVID MCCLURE AND
THOS. D. RIORDAN,
Attorneys for Defendant in Error.